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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

NO. 362 55

A. E. McDONALD,
Petitioner

vs.

ERNEST O. THOMPSON, ET AL.,
Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

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NO. 1052

A. E. McDONALD,
Petitioner

vs.

ERNEST O. THOMPSON, ET AL.,
Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

STATEMENT OF THE CASE

This case reached the United States Circuit Court of Appeals by an appeal by E. O. Thompson, C. V. Terrell and Lon A. Smith, constituting the Railroad Commission of Texas, and Walton D. Hood, W. B. Renfro and Tom Miller, employees of the Railroad Commission of Texas, from a final decree (R-42-45) of the District Court of the United States for the Northern District of Texas, restraining the Respondents individually and in their official capacities, and their agents, servants, representatives and em-

ployees, from causing, either directly or indirectly, in any way the molestation, arrest or interference with the drivers of Petitioner's trucks, and from in any way impeding, or interfering with Petitioner's business in the transportation of property in interstate commerce in any manner whatsoever. On April 12, 1938 the Circuit Court of Appeals reversed the judgment and remanded with instructions to dismiss the bill, (See Thompson et al v. McDonald, 95 Fed. (2d) 937, R. 159-170), and thereafter Petitioner filed his Petition for Writ of Certiorari in this Court.

Petitioner in his Bill of Complaint alleged that he had been regularly operating in interstate commerce by motor vehicle for hire for many years prior to June 1, 1935, and at all times since that date and was prior to said date, and is now, engaged in the business of transporting property by motor vehicles through and between the States of Texas and Oklahoma, and between intervening points situated in different states; that in engaging in such transportation he had used within the State of Texas Federal Highways Nos. 75, 77, 80, 81, 290, 90 and 281, which are federal aided highways; that by an Act of Congress, known as the Motor Carrier Act of 1935, the sole and exclusive power, jurisdiction and authority to regulate transportation in interstate commerce has been vested in the Interstate Commerce Commission; that under the provisions of said Act he had applied to the Interstate Commerce Commission for a certificate of public convenience and necessity, and would be entitled to receive such certificate

as a matter of right under what is known as the Grandfather Clause; that the jurisdiction over, and regulation and control of his business was now exclusively in the Interstate Commerce Commission; that by reason of his application for permit under the Grandfather Clause he was entitled to continue in the transportation of property as a common carrier without a certificate or permit until such time as the Interstate Commerce Commission may act upon his application; that the Railroad Commission of Texas refused to issue to him license tags or numbers that are required to be affixed by all motor vehicles carrying property in the transportation business as common carriers in the State of Texas, and have issued orders and instructions to arrest all drivers and stop all trucks of Petitioner, because Petitioner had no permit from the Railroad Commission of Texas to operate; that he had been engaged exclusively in the transportation of property in Interstate Commerce for a long time prior to June 1, 1935, and had built up a lucrative transportation business; that his drivers had been arrested by the employees of the Railroad Commission of Texas and his business had been hindered and interfered with by said Commission, and its agents, servants, and representatives (R-1 to 18).

The Judge of the United States District Court, for the Northern District of Texas, Fort Worth Division, on the sworn Bill of Complaint of Petitioner filed January 17, 1936, on that date issued a temporary restraining order citing Respondents to ap-

pear on the 24th day of January, 1936 to show cause why a temporary injunction should not be granted (R-17, 18, 19).

On the 24th day of January, 1936, the Respondents filed a Motion to Dismiss the Bill of Complaint (R-19-22) and on the 30th day of April, 1936, filed their First Amended Answer (R-22-32).

The trial Court found as facts in the case that the Respondents had caused the arrest of Petitioner's truck drivers and had delayed and tied up Petitioner's trucks and have filed criminal complaints against Petitioner's drivers and threatened and will continue to interfere with and put a stop to Petitioner's operations (R-35); that for a long time prior to June 1, 1935, and at all times since Petitioner has been continuously in bona fide operation engaged in the business of transporting property for hire over the highways of Texas and Oklahoma exclusively in interstate commerce (R-35); that in such transportation he uses highways designated as federal highways, Nos. 75, 77, 80, 81, 290, 90 and 281; that all of the highways used by Petitioner are federal aided highways except a portion of No. 281 (R-35-36); that Petitioner had filed his application with the Interstate Commerce Commission for a certificate and had filed his tariffs and rates with the Interstate Commerce Commission, and had on file with the Railroad Commission of Texas public liability and property damage insurance (R-36); that he did not transport property in intrastate commerce (R-36); that all of his trucks had been regis-

tered in the State of Texas and are in good mechanical repair. *The trial Court concluded as a matter of law that the Motor Carrier Act of 1935 superseded the Texas Motor Truck laws insofar as said Texas laws give to the Railroad Commission of Texas power to forbid the use of federal highways by Petitioner's trucks when engaged exclusively in the transportation of property in interstate commerce* (R-37-38). It further concluded that the definition of bona fide operator in the Motor Carrier Act relates to the actual, physical, continuous and regular operation of such carrier, and further concluded, as a matter of law, that Petitioner was in bona fide operation on and prior to June 1, 1935, and has been continuously in such operation since said date, and that Petitioner has complied with all applicable police requirements of the State of Texas (R-37-38). On the 13th day of October, 1936, on motion made the trial Court amended its decree so as to recite that Respondents Motion to Dismiss had been overruled and proper exception taken, and that all proofs offered in evidence of January 25, on hearing of preliminary injunction would be considered as in evidence on trial on the merits, at which time the respective parties offered their additional proofs, upon which the court based its judgment (R-42-45). The Respondents offered in evidence their First Amended Answer and attached Exhibits "A" to "I," verified by Tilden L. Childs (R-22-33; R-152), said Exhibits being a part of said Answer, which Exhibits it was agreed should be forwarded to this Court as a part of the Record (R-138), and which are on file in this Court. From this affidavit of Tilden L. Childs,

and the Exhibits attached thereto as a part thereof, the following facts appear, as set out in Respondents' Amended Answer, introduced in evidence:

1. That in 1934 Petitioner secured from the Railroad Commission of Texas his Special Commodity Carrier Permit to haul only livestock distributed by the Agricultural Department of the State of Texas between Texas points, which said Special Commodity Permit was on October 25, 1934, cancelled by the Railroad Commission of Texas (R-26 and Respondents' Original Exhibits A and B).

2. That in May, 1934, Petitioner filed an application with the Railroad Commission of Texas for a certificate as a common carrier in interstate commerce. A hearing was had upon said application, testimony heard, and Order entered July 14, 1934, denying same (R-26-27 and Respondents' Original Exhibits C, D, & E).

3. That thereafter Petitioner filed in the District Court of Travis County an appeal from said Order denying his application and secured an injunction against the Commission from interfering with his operations, from which judgment the Respondents appealed to the Court of Civil Appeals, 3rd Judicial District, which said Court reversed the judgment of the trial Court and dissolved the injunction and at the time of the final hearing of this cause the time for filing a Motion for Rehearing had expired, and the judgment of the Court of Civil Appeals dissolving the injunction became final. The opinion of the

Court of Civil Appeals dissolving this injunction is reported in 90 S. W. (2d) 581 (R-27 and Respondents' Original Exhibits F, G, H, & I).

4. While said appeal was pending in the Court of Civil Appeals Petitioner filed with the Railroad Commission of Texas another application for a common carrier certificate to engage in intrastate commerce (R-28 and Respondents' Original Exhibit J).

5. Petitioner was never authorized to use the highways of Texas by permit or certificate or otherwise from the Railroad Commission of Texas, except the Special Commodity Permit granted March 30, 1934 and cancelled October 25, 1934 (R-29-30).

6. The Order of the Railroad Commission of Texas denying the application of Petitioner for a certificate as a common carrier in interstate commerce made specific *findings of fact upon which the denial was based as to the use of the highways generally by trucks, and denied such permit on the ground that the use of the highways would place an undue burden upon the physical properties of the highways themselves, and would endanger public safety and would interfere with the use thereof by the public* (R-29-30 and Respondents' Original Exhibit E).

7. That Petitioner's operations have not been under any certificate or permit granted by the Railroad Commission of Texas but under the protection of an injunction issued by the District Court of

Travis County and dissolved by the Court of Civil Appeals as shown above, and he has never operated under any permit or authority of the Railroad Commission of Texas, except the Special Commodity Permit which was cancelled October 25, 1934 (R-28).

8. *That should Petitioner file his application to use the highways in his alleged exclusive interstate transportation business, the Railroad Commission of Texas would only require him to prove highways were capable of withstanding such transportation business and that traffic thereon would permit; and would not require him to show convenience and necessity or consider adequacy of existing transportation facilities or the effect such proposed operation would have on existing transportation facilities and upon showing that the "highways proposed to be used by him are capable of withstanding proposed use without undue injury and damage to said highways and without unreasonable interference with the use of said highways by the general public for ordinary purposes," it would authorize him to operate over such highways* (R-32).

OBJECTIONS TO PETITION

Respondents suggest that said petition wholly fails to point out specifically the errors committed by the Circuit Court of Appeals; or the points of law decided contrary to weight of authority; or points of law decided contrary to the decisions of the Supreme Courts of Texas and Florida; or the points of

law decided contrary to the decision of the Court of Civil Appeals of Texas (3rd Judicial District); or what points of law decided are in conflict with decisions of this Court; or wherein the action of said court violated the United States Constitution, except in a general way said petition does allege that the decision of the Circuit Court of Appeals violates the 14th Amendment to the Constitution and "permits the Respondents to take or destroy valuable property rights without compensation" and "in violation of the commerce clause of the Constitution" (Pet. 6-7). See *Sutter* v. *Middland Railway Company*, 280 U. S. 521; *Davis* v. *Currie*, 266 U. S. 182.

We also direct the Court to the fact that said petition does not adequately and fairly disclose the question of law involved and the grounds on which the Circuit Court rested its decision, but on the contrary misstates the holding of said Court as is shown by comparisons of quotations from said petition with quotations from the Court's opinion as follows:

QUOTATION FROM PETITION

"The Texas Legislature passed in 1931 what we commonly refer to as the 'Motor Carrier Truck Law' (Acts 1931, 42nd Leg., p. 480, Ch. 277; Art. 911b, Vernon's Annotated Civil Statutes of Texas, 1925) making no distinction in its application to intra and interstate commerce. The only applicable provision of the Texas Act requiring a 'certificate of convenience and necessity,' in part, follows:

"'Section 3. No motor carrier shall, after this Act goes into effect, operate as a common carrier without first having obtained from the Commission, under the provisions of this Act, a certificate of convenience and necessity pursuant to a finding to the effect that the public convenience and necessity require such operation,' etc.

"This is the certificate which respondents say petitioner must have and which petitioner does not even claim to have.

"Petitioner says he never did have to have any such certificate but that if he did that then the Federal Motor Carrier Act, 1935, superseded that part of the Texas Act requiring certificates or permits to operate exclusively in interstate commerce" (Pet. 2).

COURT'S OPINION QUOTATION

"Respondents further averred in their answer that should complainant present to the Commission an application to transport property for hire in interstate commerce over the highways of Texas, the said Commission would hear said application; that in hearing the application the Commission would require the applicant to show by facts that the highways proposed to be used by him were capable of withstanding the proposed use without undue injury and damage to them and without unreasonable interference with their use by the general public for ordinary purposes. The respondents specifically averred that the Commission would not require the applicant to prove that public convenience and ne-

cessity require the proposed service, nor would it consider the adequacy of the existing transportation facilities or the effect the proposed operation would have on the existing transportation facilities in determining whether or not it would authorize said applicant to operate over said highways" (R. 165).

"The authorities of appellee above cited are not controlling. Vernon's Ann. Civ. St. Tex., Article 911 (b) Sec. 6 (fol. 170) sets out the things which an applicant for a permit must show before it will be granted. Sections 6 and 9 of Article 911 (b) designate what the Commission shall consider in granting or refusing permits and certificates and these are further enlarged by Section 4 (d), which specifically makes it the duty of the Commission to regulate and supervise motor carriers in all matters whether therein specifically mentioned or not, so as, carefully, to preserve transportation and relieve undue burden on the highways arising by reason of the use of the highways by motor carriers, adjusting and administering its regulations in the interest of the public" (R. 167).

Petitioner makes an incorrect statement as to the evidence introduced in the trial court by Respondents (Pet. 4) and a correct statement as to the evidence offered by Respondents is shown in our "Statement of the Case" herein, Page 5.

It shall be Respondents' purpose in this brief to merely announce the holding of the Circuit Court of Appeals and then by argument show that it is not subject to any of the grounds relied on by Petitioner in his petition for the granting of the Writ.

HOLDING OF CIRCUIT COURT OF APPEALS

The Court properly held that the Federal Motor Carrier Act of 1935 did not supersede the Texas Motor Carrier Laws (Art. 911 (b) Vernon's Ann. Civ. St. of Tex.) in so far as said Texas Motor Carrier Laws delegate to the Railroad Commission of Texas authority and power to prohibit petitioner from using the said highways of said State as a common carrier engaged in transportation of property for hire by motor vehicles exclusively in interstate commerce until petitioner has complied with said State Motor Carrier Laws by filing application for such authority with the Railroad Commission of Texas and by making proof to said Commission that the structure of the highways proposed to be used by Petitioner was such that their proper preservation would not be impaired by the use sought by Petitioner and that the safety of the public upon said highways over which Petitioner sought his route would not be unreasonably endangered and that the additional use which he expected to impose upon said highways would not so congest traffic as to render them unsafe for the traveling public.

ARGUMENT

The Texas Motor Carrier Law, prior to the enactment of the Federal Motor Carrier Act of 1935, had been construed by this Court and inferior courts as vesting in the Railroad Commission of Texas power and authority to regulate and restrict operations

of all motor carriers for hire over the highways of the State of Texas regardless of whether or not said carriers were engaged in interstate or intrastate commerce, and specific authority from such Commission was required before any carrier operating in interstate commerce could become engaged in such interstate motor carrier transportation business over such highways. See:

Sage v. Baldwin, 55 Fed. (2d) 968;

Texport Carriers Corporation v. Smith, 8 Fed. Supp. 28;

Wald Storage and Transfer Co. v. Smith, 4 Fed. Sup. 61;

Galveston Truck Line Corp. v. Allen, 2 Fed. Sup. 488 Affirmed 289 U. S. 708;

Stephenson v. Binford, 53 Fed. (2d) 509, Affirmed 287 U. S. 251;

Sproles v. Binford, 286 U. S. 274.

After the enactment of the Federal Motor Carrier Act of 1935, it was mentioned for the first time by the Courts of this State in the case of *Railroad Commission of Texas, et al,* v. *Southwestern Greyhound Line,* 92 S. W. (2d) 296. This case was decided by the Court of Civil Appeals of the Third Supreme Judicial District of Texas and was appealed to the Supreme Court of Texas, and that Court's opinion is found in 99 S. W. (2d) 263.

It is this last mentioned opinion by the Supreme Court that petitioner contends that the opinion of the Circuit Court of Appeals is contrary to, however,

a comparison of this opinion by the Supreme Court of Texas and the opinion of the United States Circuit Court of Appeals will be convincing that the holdings of these courts are not in conflict with each other. It will be noted from a reading of the opinion by the Supreme Court of Texas, above mentioned, that that Court merely announced abstract propositions of law without attempting to apply such propositions to any given field of legislation whatsoever. The Supreme Court of Texas said in its opinion the following:

> "Such construction of the law does not deprive the State from protecting its highways and the public safety by reasonable and uniform regulations and exacting reasonable compensation for the use of such highways." (99 S. W. (2d) 268)
>
> "That the Federal Motor Carrier Law does not displace entirely the State law upon this subject is too plain for argument." (99 S. W. (2d) 268)
>
> "It will be noted that the cause was not tried on its merits nor is the suit intended to interfere with the jurisdiction of the Interstate Commerce Commission in carrying out any of the provisions of the Federal Motor Carrier Act." (99 S. W. (2d) 269)

The Circuit Court of Appeals, in its opinion, said:

> "The Interstate Commerce Commission has jurisdiction over the commercial consideration appertaining to the interstate truck business, *but the preservation and safety of the roads themselves have been left with the State Com-*

mission. It is well settled that if Congress provides only a limited field, then the State regulation is not prohibited" (R-168).

We submit that a careful examination of these decisions by the Supreme Court of Texas and the Circuit Court of Appeals will be convincing that petitioner is in error in his assertion that said opinions are in conflict. A discussion of the opinion by the Court of Civil Appeals in the *Southwestern Greyhound Line* v. *Railroad Commission, supra,* will not here be indulged because we take the position that such opinion conflicts with neither the opinions of the Supreme Court, cited above, or the Circuit Court of Appeals, and whatever the case may be, the State Supreme Court ruling would be controlling as to whether or not the Circuit Court of Appeals had decided a question of local law contrary to state law.

It will be noted that the decision of the Supreme Court of Texas in the *Southwestern Greyhound Line* v. *Railroad Commission,* 99 S. W. (2d) 263, merely decided that the decision of the trial Court in granting or refusing a temporary injunction will not be disturbed on appeal in the absence of a showing that the trial Court had abused its discretionary powers and where the petition on its face showed a cause of action. (99 S. W. 269-270)

After the Supreme Court of Texas rendered its decision in the *Southwestern Greyhound Line* v. *Railroad Commission, supra,* other cases come before the Court of Civil Appeals of Texas as follows:

Railroad Commission of Texas v. A. E. Bates, 108 S. W. (2d) 286;

Railroad Commission v. Futch, 108 S. W. (2d) 289;

Railroad Commission v. Peterson, 108 S. W. (2d) 289;

Railroad Commission of Texas v. Williams, 108 S. W. (2d) 290;

Railroad Commission v. Rayburn, 109 S. W. (2d) 708.

All of these cases were passed upon by the Court of Civil Appeals of the Third Supreme Judicial District of Texas, except the Rayburn case, which was rendered by the Court of Civil Appeals, Waco Division of Texas. An examination of each of these cases, and particularly the Bates' case, shows that the Courts of Civil Appeals of the State of Texas misconstrued the decision of the Supreme Court of Texas in the *Southwestern Greyhound Line* v. *Railroad Commission*, *supra*, and construed said opinion as holding that the Federal Motor Carrier Law of 1935 had entirely superseded the State Motor Carrier Laws to the extent that the Railroad Commission of Texas was divested of power to require interstate carriers offering to operate under grandfather rights of the Federal Act to secure authority to operate over the highways of the State of Texas. A statement showing why the Courts of Civil Appeals of Texas had so construed the Texas Supreme Court decision is shown by quotation from the Bates' case as follows:

"The contention of appellants seems to be that notwithstanding the enactment of the Federal Motor Carrier Act of 1935, which vested in the Interstate Commerce Commission exclusive authority to pass on the application of motor carriers engaged exclusively in interstate commerce on public highways for certificates of convenience and necessity, the Railroad Commission of Texas still has jurisdiction and authority, and it is its duty under the applicable provisions of article 911b, Vernon's Texas Statutes, to require motor common carriers, engaged in carrying interstate merchandise exclusively, to apply for and obtain certificates of convenience and necessity from the State Commission; and that the State Commission still has the authority to deny such certificates or permits if necessary for the protection of the State's highways, or for the safety of the public in the use of them. This question was necessarily decided against the contention of appellants by the Supreme Court in the case of Southwestern Greyhound Lines v. *Railroad Commission, 99 S. W. (2d) 263, 268, 109 A.L.R. 1235, wherein the court construed the Federal Motor Carrier Act of 1935, and held as follows: . . ."* (108 S. W. (2d) 287)

Petitioner cites a number of cases in his petition as being in conflict with prior holdings of this court, however, as he does not point out wherein such decisions conflict with the decisions of this Court, we shall not at this time endeavor to take up each of these cases as we are not advised as to his position as to wherein said decisions are in conflict with the decisions of this Court. We here assert that the opinion of the Circuit Court of Appeals is in harmony with a recent decision by this Court in the case

of *South Carolina State Highway Department* v. *Barnwell Brothers*, 58 Sup. Ct. Rep. 510, wherein this Court in speaking of the Federal Motor Carrier Act of 1935 had the following to say:

> "But the present case affords no occasion for saying that the bare possession of power by Congress to regulate the interstate traffic forces the states to conform to standards which Congress might, but has not adopted, or curtails their power to take measures to insure the safety and conservation of their highways which may be applied to like traffic moving intrastate. Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is so inseparable from a substantial effect on interstate commerce. Unlike the railroads, local highways are built, owned, and maintained by the state or its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration. The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse." (58 S. Ct. 514-515)

Another recent opinion by this Court is the case of *Kelly* v. *State of Washington*, 58 S. Ct. 87, 302 U. S. 1, wherein this court in speaking of the power of the State of Washington to enforce certain inspection laws notwithstanding Federal legislation on certain phases closely related to the field in which

the State law was applicable, and in this case this Court had the following to say: (The court was speaking concerning the opinion of the Supreme Court of Washington):

> "The state court took the view that Congress had occupied the field and that no room was left for state action in relation to vessels plying on navigable waters within the control of the federal government.
>
> "There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together' . . . " (58 S. Ct. 91, 92)

Petitioner as one of the grounds for issuance of the writ stated in his petition says that the opinion of the Circuit Court of Appeals conflicts with the opinions of the Florida Supreme Court in the cases of *State ex rel R. C. Motor Lines* v. *Florida Railroad Commission*, 166 So. 840, and *State ex rel L & L Freight Lines* v. *Douglas et al*, 169 So. 389. On close examination of these cases, it is apparent that there is no conflict as such cases merely say that the power of the State to require interstate operators to secure a certificate of convenience and necessity is

vested in the interstate commerce commission under the Federal Motor Carrier Act. This is not the question in the case here before this court as the Railroad Commission of Texas under the adjudicated cases cited above (*Sage* v. *Baldwin*, and *Galveston Truck Line Corporation* v. *Allen*, *supra*), and evidence in this case was not objecting to McDonald's operations on the ground that he had not procured a certificate of public necessity and convenience but on the ground that highway conditions and traffic thereon would not permit such operations, and that he had not made application to said Commission showing that highway conditions and traffic thereon would permit such transportation and that the Commission on such showing had granted him authority to operate over such highways. The last paragraph in the Supreme Court's decision in the case of *State ex rel R. C. Motor Lines* v. *Florida Railroad Commission*, *supra*, shows that the principles announced by the Circuit Court of Appeals were recognized by the Florida Supreme Court, and this paragraph is copied here as follows:

> "Whatever right the Railroad Commission of the State of Florida may have vested in it under chapter 14764, Acts 1931, to specially determine, after hearing, that a particular route being used for an interstate motor carrier operation is so congested that another route not so congested should be designated and used as an alternative, its exercise is in its essence the application of the state's police power, and goes solely to the state's authority to route the traffic moving in commerce generally after the proper certificate therefore has been granted as a mat-

ter of course to the holder to engage in the motor carrier business of which the traffic itself is merely a part. The power cannot be so exercised by the state commission as to become an instrument for burdening or controlling the holder's right to engage in the business of carrying on interstate commerce as a lawful business, because the right to do that is a federal constitutional privilege with which the state has only a limited power to interfere in proper cases. See *Bradley* v. *Public Utilities Commission*, 289 U. S. 92, 53 S. Ct., 577, 77 L. Ed. 1053, 85 A.L. R. 1131." (166 So. 842)

The holding of the Circuit Court of Appeals in the case at bar does not defeat the commerce clause in the Constitution of the United States as asserted by petitioner in his petition. See *Bradley* v. *Public Utilities Commission*, 289 U. S. 92, 85 A.L.R. 1131, and cases there cited.

The decision of the Circuit Court of Appeals does not violate the Fourteenth Amendment to the Constitution of the United States as alleged in the petition. See *Bradley* v. *Public Utilities Commission*, *supra*, *Continental Baking Co.* v. *Woodring*, *286* U. S. 352, 81 A.L.R. 1402, *Stephenson* v. *Binford*, 287 U. S. 251, 87 A.L.R. 721.

Petitioner in his brief merely refers this court to a portion of the Texas Motor Carrier Laws as enacted by the 42nd Legislature of the State of Texas in 1931, as shown by Appendix A in his brief. We believe that a proper determination of this suit necessarily invites an examination of the entire Act as

is now fully set out in Article 911b, Vernon's Annotated Civil Statutes of Texas, and especially sections 4d and 22b thereof as shown in Appendix "A" attached hereto.

WHEREFORE, Respondents pray that the writ be in all things denied.

Respectfully submitted,

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ALBERT G. WALKER,
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Attorneys for Respondents.

APPENDIX A

Part of Texas Motor Carrier Laws (Art. 911B Vernon's Ann. Civil Statutes of Texas, being chapter 277, Acts of 1931, 42nd Legislature) as follows:

Section 4 (d) The Commission is further authorized and empowered, and it shall be its duty, to supervise and regulate motor carriers in all matters whether specifically mentioned herein or not so as to carefully preserve, foster and regulate transportation and to relieve the existing and all future undue burdens on the highways arising by reason of the use of the highways by motor carriers, adjusting and administering its regulations in the interests of the public.

The Commission, in prescribing and adopting rules and regulations and in forming its conclusions and in prescribing its orders, shall invite the Highway Commission's opinion on the condition of the public highways involved and the ability of said highways to carry the existing and proposed additional traffic, and the Commission shall give due and proper consideration to the orders, regulations, ordinances or recommendations of the Highway Commission of Texas; provided, however, nothing herein contained shall be deemed to restrict the powers of the Highway Commission under existing laws. The Commission shall also give due and proper consideration to the recommendations of the commissioners courts of the several counties and to the rec-

ommendations of the local government of any municipality through or between which motor carriers operate.

Section 22 (b) Declaration of Policy.—The business of operating as a motor carrier of property for hire along the highways of this State is declared to be a business affected with the public interest. The rapid increase of motor carrier traffic, and the fact that under existing law many motor trucks are not effectively regulated, have increased the dangers and hazards on public highways and make it imperative that more stringent regulations should be employed, to the end that the highways may be rendered safer for the use of the general public; that the wear of such highways may be reduced; that discrimination in rates charged may be eliminated; that congestion of traffic on the highways may be minimized; that the use of the highways for the transportation of property for hire may be restricted to the extent required by the necessity of the general public, and that the various transportation agencies of the State may be adjusted and correlated so that public highways may serve the best interest of the general public.